

MINUTES

**MONTANA SENATE
56th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN LORENTS GROSFIELD**, on January 21, 1999 at 9:00 A.M., in Room 104 Capitol.

ROLL CALL

Members Present:

Sen. Lorents Grosfield, Chairman (R)
Sen. Al Bishop, Vice Chairman (R)
Sen. Sue Bartlett (D)
Sen. Steve Doherty (D)
Sen. Duane Grimes (R)
Sen. Mike Halligan (D)
Sen. Ric Holden (R)
Sen. Reiny Jabs (R)
Sen. Walter McNutt (R)

Members Excused: None.

Members Absent: None.

Staff Present: Judy Keintz, Committee Secretary
Valencia Lane, Legislative Branch

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 188, SB 198, 1/19/1999
Executive Action: SB 165, SB 176, SB 188

HEARING ON SB 188

Sponsor: SEN. TOM BECK, SD 28, Deer Lodge

Proponents: John Connor, Montana County Attorneys Association

Opponents: None

Opening Statement by Sponsor:

SEN. TOM BECK, SD 28, Deer Lodge, introduced SB 188. He remarked that an incident at Swan River Boot Camp involved an inmate beating a woman. He was placed in the Ronan jail in Lake County and killed an inmate in his cell. Current law states that an inmate at Montana State Prison who committed this same crime would be eligible for the death penalty. The detention center at Ronan was not considered part of the prison system. This bill provides that a person who commits an offense of deliberate homicide while in a detention center is eligible for the same punishment.

Proponents' Testimony:

John Connor, Montana County Attorneys Association, stated that this bill arises from a Supreme Court decision. In 1966, there was an inmate from the prison, Rodney Satler, who had been convicted of deliberate homicide in Sanders County and was serving time in the prison. He was sent to the Boot Camp in Lake County. While there, he assaulted and almost killed the assistant administrator, Donna Weeks. While he was awaiting trial for that offense, he was housed in the Lake County jail pending trial on the assault at the boot camp. He was in jail with 11 other inmates. He was a predatory inmate who liked to intimidate other inmates. He followed an inmate into an unused cell which contained an exercise bike, removed the seat from the stationery bike and beat that inmate to death. The inmate died on the way to the hospital. Mr. Satler was charged with deliberate homicide. This was the second attempted deliberate homicide charge for him.

Montana has a death penalty statute which requires one of several listed aggravating circumstances, 46-18-303. The state gave notice of its intent to seek the death penalty using condition (1)(a), committed by a prison inmate serving a sentence in the state prison and (2) committed by a person who had previously been convicted of another deliberate homicide.

Currently there are six inmates on death row. Four of the six have been sentenced under terms of both (1) and (2). In the Satler case, he maintained that he could not be sentenced under aggravating circumstance (1) because he was not in the state prison. He was in the Lake County jail. He asked the Supreme Court to strictly construe that statute. There was an earlier case, State v. Keith, where the court held that an inmate who commits a homicide while on parole is not in the state prison and therefore cannot be given the death penalty under that subsection. He argued that the Keith decision applied to his

situation. The Court said that it may have been error to sentence him under (1) because he was not in the state prison. However, (2) still applied and federal court cases state only one aggravating circumstance is necessary to impose the death penalty. The Court held that if there was error in (1) it was harmless error. The decision implies that if that had been the issue upon which the case turned, they would have lost the case.

The County Attorneys Association and the Attorney General's Office, which handles all of the subsequent appellate litigation involving death cases, believe that the statute should be amended to cover a more generic situation.

{Tape : 1; Side : A; Approx. Time Counter : 9.13}

Opponents' Testimony: None

Questions from Committee Members and Responses: None

Closing by Sponsor:

SEN. BECK closed on SB188.

HEARING ON SB 198

Sponsor: **SEN. CHRIS CHRISTIAENS, SD 23, Great Falls**

Proponents: **None**

Opponents: **None**

Opening by Sponsor:

SEN. CHRIS CHRISTIAENS, SD 23, Great Falls, commented that last session a lot of money was spent on providing beds for inmates and projections were that the populations would continue to escalate at a rapid rate. The Corrections Oversight Committee looked for options to assist with the need to continue to build more prisons.

This bill should provide \$625,000 in savings and should curtail the need for additional prison beds. Within the next year there will be 144 new beds in Missoula and 500 new beds with Corrections Corporation of America (CCA) in Shelby. There were plans for 214 beds in Butte/Deer Lodge but this project is now on hold. This would provide approximately 800 additional beds available to the department in the near future. The largest expense is the ongoing operation of a facility opened seven days a week, 24 hours a day.

He referred to the fiscal note, **EXHIBIT(jus16a01)**, which showed a zero amount of savings. He further referenced a chart which was in a report from the Board of Pardons, **EXHIBIT(jus16a02)**. There are 210 prisoners who discharged in FY98. There are also 237 who discharged with probation to follow. This bill only addresses those who flat discharge and provides that inmates discharge on the first day of the month. Jail costs today are \$56.16 per day. Nearly one-half of the population entering Montana State Prison each year are on revocations. Last year 116 revocations were for technical violations. There is proposed legislation which states that rather than returning someone to prison for technical violations that this be handled in the county jails.

The cost per day at the prison averages \$49.24. Male contract beds are \$46.81 a day. The women's prison costs \$81.08 a day and the contract beds for women are \$78.46 a day. Pre-release beds are \$37.41 for males and \$50.54 for females. The inmates themselves are paying up to \$200 a month. If 15 people were released the first day of the month, this would result in large savings.

In the past when prisons were overcrowded, the department could allow up to 180 days good time to relieve overcrowding and release people. This bill does nothing different. Since this bill is permissive, it would not violate the truth in sentencing issue. Also, regarding equal protection, the department is allowed to take advantage of an inmate's in-house records. Anyone who has spent 8 to 10 years in prison will not receive any benefit for staying in prison an additional 15 days.

A concern is if 15 inmates left at the same time, they may all meet and have a great party. He added that some of the prisoners are picked up by family or friends when they discharge. Prisoners are also at different locations.

Additional handout, letter from Robert "Skip" Culver, Senior Fiscal Analyst, Montana Legislative Branch, dated November 12, 1998, **EXHIBIT(jus16a03)**.

{Tape : 1; Side : A; Approx. Time Counter : 9.30}

Proponents' Testimony: None

Opponents' Testimony: None

Informational Testimony:

Mike Ferriter, Department of Corrections, maintained that SB 198 is a positive bill and allows some cost savings for the state.

The early discharge date is designated only for those offenders who have completely finished their sentence and not for the offenders who have earned the trust to be placed in a pre-release center. Most offenders who flat discharge are the most difficult offenders to manage and pose the greatest risk. Oftentimes these are the offenders who have been denied parole due to negative behavior while in the prison.

Last month there were 26 offenders who flat discharged their sentence. Fifteen of these offenders were at the Montana State Prison, two at the Montana Women's Prison, four at the Great Falls Regional Prison, one at a county jail, and four at pre-release centers. Seven of these offenders were classified as high risk offenders with sex or violent offenses in their history. He questioned how safe it would be to release 15 offenders from Montana State Prison on one day most of which have no solid plans for employment or housing. He had concerns from the victim's perspective as well as from the criminal justice perspective relative to the issue of holding offenders accountable.

Questions from Committee Members and Responses:

SEN. HALLIGAN asked for further information regarding costs on a per day basis. **Mr. Ferriter** explained that they have 41 contracts with counties to house offenders who may be on a waiting list for the prison or may be parole violators. The cost per day is \$20 in some counties and as high as \$76 in others. The average is approximately \$56.

SEN. HALLIGAN questioned whether this could potentially allow for parole eligible individuals. **SEN. CHRISTIAENS** stated that they believed using two different groups of people would compromise the plan. Most individuals on parole are under some form of supervision in the community. To keep this as clean as possible, they decided to use the flat discharge prisoners only.

SEN. MCNUTT inquired about the disbursement of flat discharges throughout the state. **Mr. Ferriter** stated that regarding flat discharges in the previous month 15 persons were from Montana State Prison, 2 were from the women's prison, 4 from the Great Falls Regional Prison, 4 were from pre-release centers, and one was from a county jail. This is a good average with most of the prisoners being released from the Montana State Prison.

SEN. BARTLETT asked if it would be feasible to stagger the hour at which the prisoners exited the prison. **Mr. Ferriter** clarified that transportation compounds the issue. The local bus station at Deer Lodge prefers that offenders not leave from there. They

transport offenders to Butte. They have made arrangements with the Butte pre-release center so that the prisoners wait at the pre-release center until their bus arrives. He is not sure that it is a good idea to have seven or more former inmates waiting at the same bus depot.

SEN. DOHERTY remarked that once the inmates were discharged, the state did not have a hold on them. **Mr. Ferriter** agreed but added that the persons who flat discharge are quite often the ones who probably did not want parole or pre-release and had no interest in treatment. He was concerned about these people leaving together in a group.

SEN. BARTLETT questioned the largest number who are currently flat discharging on a particular day.

SEN. HALLIGAN remarked that the charges by the county varied considerably. **Joe Williams, Central Services, Department of Corrections**, explained that the average cost for county jails is based on a per day rate for 45 counties. Phillips County charges \$82 a day since they need to bring in additional staff. The average is approximately \$49 per day. The cost per day at Montana State Prison is \$56.82. The regional prison cost is \$45 a day. He added that the largest number of persons who flat discharge on a particular day would be three.

He added that the savings from this bill will not approach \$652,500. When calculating this amount, releases were used and not flat discharges. On average, 75 inmates are released monthly from the Montana State Prison. This would calculate to 900 offenders per year serving a flat discharge. The Board of Pardons and Parole stated only 210 inmates. Calculating about 100 flat discharges per year, the savings would be approximately \$23,000.

SEN. CHRISTIAENS summarized that this is a tool for use by the department. The cost for one individual in Montana State Prison for one year is \$17,000. He disagrees with the fiscal note and is willing to work with the department to come up with a better one.

SEN. DOHERTY suggested a possible amendment that would allow staggering dates for releasing flat discharges. This could equate to releasing three inmates on the first day of the month, three on the second day of the month, etc. This may result in lesser savings but may also reduce the anxiety of having a group released at the same time.

SEN. CHRISTIAENS stated that they would be willing to do what it took to make this a better bill. The money that is not spent on building more prisons could be spent on treatment for the inmates.

SEN. HALLIGAN added that the department could be given the management ability to allow discharge to occur anytime during the month. **Mr. Ferriter** maintained that offenders are sentenced to do an amount of time and this would bring them back to giving good time.

Mr. Williams stated that the department had a concern regarding federal funds tied to the truth in sentencing law. If an inmate is authorized early release, this would enact good time. He added that there may also be a legal liability issue. If an inmate who is authorized to be released earlier than the statute allows, commits an act during the time he would still be in prison, the department may be legally liable.

SEN. BARTLETT asked what statutes would be considered going against the truth in sentencing laws. **Mr. Williams** stated that this would include anything that would reduce an offender's sentence. They expect \$13 million in federal violent offender incarceration grants. Of that amount, \$5 million has been spent on the Missoula Regional Prison and the majority of the funds will be spent for the construction and renovation of the Montana Women's Prison in Billings. Roughly \$500,000 would be considered truth in sentencing legislation.

It has been stated that if an inmate is let go early, \$56.82 is saved for that day. The savings would actually be about \$6.00 a day. This includes clothes and food. Approximately \$50.00 a day is a fixed cost.

CHAIRMAN GROSFIELD remarked that the legislature gives the judiciary the discretion of setting a sentence. This bill would allow arbitrarily reducing the sentence by a certain number of days. **Ms. Lane** responded that she had concerns about the legislature interfering with a judicially ordered sentence. She was advised by **SEN. CHRISTIAENS** and **Greg Petesch** that there have been such statutes in the past, particularly the good time sentencing laws that allowed for this. She added that there may be equal protection problems for early releases.

CHAIRMAN GROSFIELD questioned whether this should not be addressed in the penalty statutes. He remarked that some inmates would be getting a better deal than others. **Mr. Ferriter** stated that when dealing with liberty interests of offenders, there will be some issues in releasing one prisoner 15 days earlier than

another prisoner. There has been the suggestion of giving everyone a 30 day early release. This would bring them back to the good time issue. This was always an issue for victims and prosecutors.

SEN. DOHERTY insisted that this bill did not have anything to do with good time. Good time, fairness, or equal protection issues have nothing to do with this bill. This bill, if adopted, simply is an administrative cost savings for the taxpayers of Montana. It simply does not address good time in anyway. **SEN. CHRISTIAENS** agreed.

SEN. BARTLETT added that she is also disturbed with the use of the term "good time". This is clearly not included in this bill. When legislation was being discussed which eliminated good time a few sessions ago, the department was distressed and explained how good time was used to motivate offenders. They have managed to accommodate the legislature's decision to eliminate good time. She finds it highly ironic that now there is a concern that this might be interpreted as something akin to good time and therefore may jeopardize federal funds. The department did not support the elimination of good time earlier.

SEN. GRIMES favored the suggestion to allow for some discretion by the department in staggering release dates.

CHAIRMAN GROSFIELD questioned the state's liability if a person who was released a few days early, committed a crime during that time. **Ms. Lane** believed the issue would be raised. If the department was acting under state law that gives them the authority to do so, they may not be found liable. This does not mean that they would not be sued.

{Tape : 1; Side : B; Approx. Time Counter : 10.15}

Closing by Sponsor:

SEN. CHRISTIAENS closed on SB 198. He summarized that up until two years ago, up to 180 days was allowed and used for early release and the issue of liability has been addressed by the department under those previous laws. Montana inmates serve longer on average than people in other states sentenced for the same types of crime. The legislature needs to be pro active in assisting the department, in a sentence driven environment, to manage the resources available. If this bill saves \$20,000 a year, it is worthwhile.

EXECUTIVE ACTION ON SB 188

Motion/Vote: SEN. MCNUTT MOVED SB 188 DO PASS. The motion carried unanimously - 9-0.

{Tape : 1; Side : B; Approx. Time Counter : 10.20}

EXECUTIVE ACTION ON SB 165

Ms. Lane provided the Committee with alternative amendments, SB0016501.avl **EXHIBIT(jus16a04)** and SB0016502.avl **EXHIBIT(jus16a05)**. If SB0016502.avl were adopted, the SB0016501.avl amendments would not be need. The first amendment clarifies that the department does not have any involvement in the disbursal of the funds once the sheriff sells the vehicles. The second amendment addresses a concern regarding leftover money that is not disbursed. The amendment states that excess money from a sale would be handled by unclaimed property. The second amendment is a substitute bill and would then become the bill. It places tow truck operator liens specifically into the agisters' lien laws.

SEN. HALLIGAN questioned the priority of the lien in relation to a secured party. **Ms. Lane** explained that in the agisters' lien laws there is a provision that it takes priority over secured holders if they give them certain notice requirements, etc.

SEN. BARTLETT asked if the second amendment was acceptable to tow truck operators. **Ms. Lane** explained that she had not been contacted by them.

SEN. HOLDEN stated that tow truck drivers charge substantial sums of money for towing and storage. He stated that the charges needed to be negotiated between the customer and the tow truck driver. **Ms. Lane** stated that the amendments were drafted to limit the storage fees for 60 days.

SEN. HOLDEN further remarked that when a customer picked up his or her vehicle from the towing business, that customer had to pay the bill before receiving the vehicle. There is no need for a lien on that vehicle. The lien gives them more power against the consumer to charge an inflated fee.

SEN. MCNUTT commented that his business deals with untitled vehicles. They invoke a mechanics lien which provides that as long as they hold onto the collateral, they can demand payment for it. He questioned whether a credit union or bank could demand the release of their collateral before the bill is paid. He questioned whether a mechanics lien would take effect on a titled vehicle.

SEN. HOLDEN stated that it was his experience that the mechanics' lien is secondary to a bank lien.

{Tape : 2; Side : A; Approx. Time Counter : 10.33}

SEN. BARTLETT remarked that the agisters' lien allowed a person who had repaired property to keep the property until the bill was paid.

SEN. DOHERTY stated that in the instance of an automobile accident where the driver is injured and taken to the hospital, law enforcement notifies a tow truck operator to tow the vehicle. The person who owns the vehicle did not authorize the charges but in order to get their vehicle back the charges need to be paid. Storage fees are also very high.

Motion: SEN. GRIMES MOVED TO AMEND SB 165 - (SB0016502.av1)

Discussion:

SEN. GRIMES asked if safekeeping or carriage could be clarified in subsection (2). **Ms. Lane** responded that she didn't know why they were not able to use the agisters' lien.

SEN. HALLIGAN stated that everyone else charges for actual work provided. Storage can also be an exorbitant amount. He suggested stating that the fees needed to be a reasonable amount.

SEN. GRIMES questioned whether reasonable should apply to everything in subparagraph (2). **Ms. Lane** asked if the lien should apply to storage as well as towing charges. This would include a new subsection that would differentiate between storing of motor vehicles that have been towed versus everything else.

CHAIRMAN GROSFIELD questioned whether inserting the word reasonable to apply to agisters' lien laws may cause title problems. **Ms. Lane** did not see a problem.

SEN. DOHERTY remarked that applying the word reasonable to tow truck charges and storage charges is a reasonable thing to do. It may be unreasonable to insert "reasonable" into the entire agisters' lien. There are people who would be unaware of this action in terms of adequate public notice for a hearing.

SEN. BARTLETT explained that the agisters' lien does not take precedence over perfected security interests unless within thirty days from the time that the property is received, the agisters' lien holder gives notice to the secured party. Within 20 days after this is mailed, or ten days after it is given personally, the secured lien holder or representative may take possession of

the property by paying what is due to the agisters' lien holder. This does provide protection for credit unions and banks who have perfected security interest in a vehicle. The agisters' lien can be enforced within 30 days after they provide the service. The earliest service of the tow truck operators would be towing the vehicle.

Motion: SEN. GRIMES AMENDED HIS MOTION TO INSERT REASONABLE TOWING AND STORAGE. HE WOULD ELIMINATE (2) AND (3).

Ms. Lane stated that in (2), line 5, following the word "carriage" an insertion could state "including the towing and storage of a motor vehicle".

SEN. GRIMES suggested stating "carriage, towing, or storage of the article". This would strike the new language in (3).

Ms. Lane explained that the amendment is still drafted as a substitute bill. She added that **SEN. GRIMES'** motion is to use SB0016502.avl, strike out the new language in (3)(a) and (b) and simply insert "towing and storage" in (2).

Vote: The motion carried, 7-2, with SENATORS DOHERTY and HOLDEN voting "no".

Motion: SEN. DOHERTY MOVED TO INSERT THE WORDS "REASONABLE TOWING OR REASONABLE STORAGE".

Ms. Lane suggested an insertion in the second to the last line in (2), following material, stating "or reasonable towing and storage charges".

Vote: The motion carried unanimously, 9-0.

Motion/Vote: SEN. HALLIGAN MOVED SB 165 AS AMENDED. The motion carried, 8-1, with SEN. HOLDEN voting "no".

{Tape : 2; Side : A; Approx. Time Counter : 10.55}

EXECUTIVE ACTION ON SB 176

Motion: SEN. HALLIGAN MOVED TO AMEND SB 176, (SB0017601.avl - EXHIBIT(jus16a06)).

Discussion:

SEN. GRIMES remarked that amendments 4-6 addressed a pattern of infliction of pain. This is quite subjective and may create

major issues out of minor circumstances that occur in facilities.

Vote: The motion carried unanimously.

Motion: SEN. HOLDEN MOVED TO AMEND SB 176, (SB0017602.av1 - EXHIBIT(jus16a07)).

Discussion:

Ms. Lane explained that the amendments would remove the self neglect provisions found on page 3, lines 1 and 2.

SEN. HOLDEN believed that older people should not be pressured by social workers to leave their homes. This is a concept that should be debated separately at another time.

SEN. HALLIGAN spoke against the motion. He is guardian for six or seven people. Half of those cases were self neglect. This involves mental illness, Alzheimers, etc. Family, friends, or neighbors call Adult Protective Services because they are concerned. There is tremendous neglect at times when people live by themselves. There is a very strong public policy for people to be left alone. The county attorney's office needs to file a petition to ask for a temporary order to provide the person health care or whatever else is needed. A hearing is then held where a person can contest this intervention. Usually it is a family member or a neighbor who is distressed and calls Adult Protective Services because someone they love is harming and neglecting themselves. It is often advanced age that causes the neglect.

SEN. GRIMES stated that in Lewistown a while back the department was notified that someone in their home was in need of care. Later on, they found this person dead. The department was severely criticized but stated that they felt it would be an intrusion for them to go in earlier due to the circumstances. He questioned whether this might be creating more liability for the department.

SEN. HALLIGAN believed this bill would add some clarity for action. It may create a potential problem if the department does not act.

CHAIRMAN GROSFIELD maintained that neglect only applies to a person who has assumed legal responsibility where before it applied to the agency, a guardian, or any person legally responsible.

SEN. GRIMES questioned whether this may be a policy change for the department. **Ms. Lane** believed that it could be an inadvertent policy change. The old language stated "an employee of a public agency". It is obvious that the department does not intend to intervene in their own conduct and behavior. They would not intend neglect to mean their failure to act.

Vote: The motion carried on roll call vote, 5-4.

Motion/Vote: SEN. HALLIGAN MOVED SB 176 DO PASS AS AMENDED. The motion carried unanimously, 9-0.

ADJOURNMENT

Adjournment: 11:27 A.M.

SEN. LORENTS GROSFIELD, Chairman

JUDY KEINTZ, Secretary

LG/JK

EXHIBIT (jus16aad)